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October 1, 2020

BY ECF

Honorable Richard J. Sullivan
United States Appeals Court
Second Circuit
40 Foley Square, Room 2104
New York, NY 10007

Re: Hayden v. The City of New York, et al. 17-CV-1894-RJS

Dear Judge Sullivan:

I represent defendants the City of New York and Police Officers Abdalla and Kotowski in this matter. I write with the consent of plaintiff's counsel, Remy Green, to request a two-week extension of time for the parties to file amended pre-trial submissions. Pursuant to the Court's last order, such amendments, if any, are to be filed tomorrow, October 2, 2020. Defendants request until October 20, 2020 to file these submissions.

The basis for this request is that last Thursday (September 24), plaintiff's counsel informed me for the first time that due to medical reasons (which were disclosed, but in deference to the plaintiff, I will not detail on the public docket), plaintiff will be unable to testify at trial - regardless of its date. Accordingly, plaintiff's counsel advised me she would propose deposition designations to admit at trial. She provided me those designations on Tuesday (September 29). I have begun going through them to note my objections.¹ However, I still need to counter-designate testimony and then provide those counter-designations to plaintiff's counsel to insert plaintiff's objections, if any. I also need to give some thought to how the jury-charge,

¹ I noted in doing so that there were multiple instances where plaintiff's designations began on a line that was mid-answer, or included a question with no answer. I stopped my review to confirm with plaintiff's counsel whether these were typos, and to get the correct designations before continuing. She advised me that with a few exceptions these were not typos; I am still awaiting specific list from her as to which ones are typos, so that I can properly note my objections.

exhibit list, other portions of the JPTO, and our draft motions *in limine* may need to be amended to account for plaintiff's inability to testify and the need to read-in portions of his deposition. Finally, because of my Office's procedures, all pre-trial submissions need to be reviewed internally prior to filing. Given that I received the information that plaintiff is unable to testify at trial only one week ago, and received plaintiff's proposed deposition designations only two days ago, I simply do not have enough time to revise our submissions, have them internally reviewed, discuss them with plaintiff's counsel, and jointly filed by Friday. Accordingly, defendants respectfully request an additional two weeks to October 20, 2020 to file these documents.² The final pre-trial conference in this case is not scheduled until November 20, 2020, so this extension should not affect any other dates.

Thank you for your consideration.


Respectfully submitted,

/s/ *Elissa Fudim*
Elissa Fudim
Senior Counsel

IT IS HEREBY ORDERED THAT the deadline for the parties to submit a revised Proposed Pretrial Order, if desired, is extended to October 20, 2020. The deadlines to file other submissions, motions, or papers as set out in this Court's June 24, 2020 order will remain unchanged. IT IS FURTHER ORDERED THAT Plaintiff shall submit a letter no later than October 9, 2020, explaining why Plaintiff cannot testify at trial and how the absence of such testimony is expected to affect the trial. To the extent the explanation requires the disclosure of confidential medical information, Plaintiff's letter may be filed under seal.

SO ORDERED.

Dated: October 2, 2020
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation

² I have accounted for the Columbus day holiday when my Office is closed.